

Montana Water Court
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FILED
05/15/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
42A-0023-I-2023
Lambert, Kathryn
6.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION ROSEBUD CREEK - BASIN 42A
INTERLOCUTORY DECREE

CLAIMANT: Greg Pattison

OBJECTOR: United States of America (Bureau of Indian Affairs)

NOTICE OF INTENT TO APPEAR: Northern Cheyenne Tribe

CASE 42A-0023-I-2023

42A 30143640

42A 30145583

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The United States of America (USDI Bureau of Indian Affairs) objected to these claims. The Northern Cheyenne Tribe filed a notice of intent to appear for each claim. On April 26, 2023 the parties filed a Stipulation. The Stipulation is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. Both claims appeared in the Interlocutory Decree with the following:

Type of Historical Right: USE

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE NORTHERN CHEYENNE COMPACT.

Both claims should be:

Type of Historical Right: RESERVED

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

THIS WATER RIGHT IS A WALTON RIGHT.

2. Both claims should have the following remark added as requested in the Stipulation:

IN THE CASE OF ANY SHORTAGES, THIS WATER RIGHT AND THE NORTHERN CHEYENNE TRIBAL WATER RIGHT IN ARTICLE II.A.3 OF THE NORTHERN CHEYENNE-MONTANA COMPACT, 85-20-301 MCA, SHALL SHARE SHORTAGES IN THE SAME MANNER AS SHORTAGES ARE SHARED WITH THE CROW TRIBE UNDER THE CROW-MONTANA WATER RIGHTS COMPACT, 85-20-901, MCA. SEE STIPULATION FILED 04/26/2013 IN CASE 42A-0023-I-2023.

3. Both claims appeared in the Interlocutory Decree with the following notice remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 42A DECREE ISSUED 05/23/2013.

This remark should be removed from each claim as having served its notice purpose.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claims.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Interlocutory Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

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Note: Service List Updated 5/8/2023

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
ROSEBUD CREEK
BASIN 42A**

Water Right Number: 42A 30143640 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: REUBEN BUSENITZ
PO BOX 16
BUSBY, MT 59016 0016

DIANA BUSENITZ
PO BOX 16
BUSBY, MT 59016 0016

Priority Date: MAY 7, 1868

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

Type of Historical Right: RESERVED

Purpose (use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: MIDDLE FORK DAVIS CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNW	14	4S	37E	BIG HORN

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNW	14	4S	37E	BIG HORN

Remarks:

IN THE CASE OF ANY SHORTAGES, THIS WATER RIGHT AND THE NORTHERN CHEYENNE TRIBAL WATER RIGHT IN ARTICLE II.A.3 OF THE NORTHERN CHEYENNE-MONTANA COMPACT, 85-20-301 MCA, SHALL SHARE SHORTAGES IN THE SAME MANNER AS SHORTAGES ARE SHARED WITH THE CROW TRIBE UNDER THE CROW-MONTANA WATER RIGHTS COMPACT, 85-20-901, MCA. SEE STIPULATION FILED 04/26/2023 IN CASE 42A-0023-I-2023.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
ROSEBUD CREEK
BASIN 42A

Water Right Number: 42A 30145583 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: REUBEN BUSENITZ
PO BOX 16
BUSBY, MT 59016 0016

DIANA BUSENITZ
PO BOX 16
BUSBY, MT 59016 0016

Priority Date: MAY 7, 1868

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

Type of Historical Right: RESERVED

Purpose (use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF DAVIS CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NE	22	4S	37E	BIG HORN

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NE	22	4S	37E	BIG HORN

Remarks:

IN THE CASE OF ANY SHORTAGES, THIS WATER RIGHT AND THE NORTHERN CHEYENNE TRIBAL WATER RIGHT IN ARTICLE II.A.3 OF THE NORTHERN CHEYENNE-MONTANA COMPACT, 85-20-301 MCA, SHALL SHARE SHORTAGES IN THE SAME MANNER AS SHORTAGES ARE SHARED WITH THE CROW TRIBE UNDER THE CROW-MONTANA WATER RIGHTS COMPACT, 85-20-901, MCA. SEE STIPULATION FILED 04/26/2023 IN CASE 42A-0023-I-2023.